

REMARKS

Claims 2-48 are pending in this application. By this Amendment, claim 36 is amended. The specification is also amended, as discussed below.

Entry of the amendments is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance (for the reasons discussed herein); (b) do not raise any new issue requiring further search and/or consideration (as the amendments amplify issues previously discussed throughout prosecution); (c) satisfy a requirement of form asserted in the previous Office Action; (d) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (e) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because they are made in response to rejections in the final rejection not previously made. Entry of the amendments is thus respectfully requested.

Applicant gratefully acknowledges the allowance of claims 43-47.

The Office Action objects to the specification because reference number 8 is used to denote two different elements. Applicant has corrected the paragraph numbers to resubmit the changes to the specification. The amendments to the specification are in accordance with the changes to the drawings. Accordingly, withdrawal of the objection to the specification is respectfully requested.

Applicant appreciates the courtesies shown to Applicant's representative by Examiner Walczak in the July 6 telephone interview. Applicant's separate record of the substance of the interview is incorporated into the following remarks.

The Office Action rejects claims 36, 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 under 35 U.S.C. §112, second paragraph, as indefinite. The Office Action also rejects claims 36, 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. These rejections are respectfully traversed.

As discussed during the telephone interview, claim 36 is amended to remove the language considered to be indefinite and to constitute new matter not described in the original specification. Although Applicant respectfully disagrees that such language constitutes new matter, especially in view of the recitation of "a substance for application" as recited in original claim 36, claim 36 is amended to advance prosecution.

Applicant respectfully submits that such amendment to claim 36 obviates the rejections and that claim 36 fully complies with 35 U.S.C. §112. Accordingly, withdrawal of the rejects is respectfully requested.

The Office Action rejects claims 36, 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 under 35 U.S.C. §102(b) over U.S. Patent No. 2,876,475 to Mann. This rejection is respectfully traversed.

Independent claim 36 recites *inter alia* "a receptacle containing at least one of a cosmetic and a care substance for application to a portion of a human body." It is respectfully submitted that Mann fails to disclose or suggest these claimed features.

As discussed during the telephone interview, Mann cannot reasonably be considered to disclose a cosmetic or a care substance for application to a portion of the human body. Applicant respectfully disagrees with the overly broad interpretation of "cosmetic" and "care product" asserted by the Office Action with respect to claims 37 and 48 (page 4, line 22 - page 5, line 2, and page 5, lines 4-6).

Applicant respectfully submits that the modifying phrase "for application to a portion of the human body" defines the substances that are encompassed by the terms "cosmetic" and "care substance" recited in claim 36. As such, the modifying phrase should be given patentable weight in combination with the terms being modified so as to properly consider the claim as a whole, as required by MPEP §2141.02.

As described in the specification of this application, the substances encompassed by the claims are only products specifically designed to be applied to the human body, for example, to the skin, the hair and/or the nails. Such substances are well understood by those skilled in the art to include, for example, treatment products such as sunscreen, moisturizer and/or medicaments, cleansing products (specifically designed for parts of the human body) and cosmetic products such as makeup (e.g., foundation, concealer, rouge, mascara, eyeliner, eyeshadow, nail polish, lipgloss, and the like.) See, for example, paragraph [0049] of the specification. Thus, other substances, while "capable" of being applied to the human body, are not encompassed by the recitation of "at least one of a cosmetic and a care substance for application to a portion of the human body."

As discussed during the telephone interview, Mann discloses a device and a substance for applying the substance to a floor. Applicant respectfully submits that the substance, flooring wax, is not for application to a portion of the human body, and thus is not encompassed by "at least one of a cosmetic and a care substance for application to a portion of the human body," as recited in claim 36. As such, the device disclosed by Mann does not comprise a receptacle containing a cosmetic or a care substance for application to a portion of a human body, as recited in claim 36.

Therefore, Applicant respectfully submits that claim 36 is patentable over Mann. Claims 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 are patentable at least in view of the patentability of claim 36 from which they depend, as well as for the additional features they recite. Accordingly, withdrawal of the rejection is respectfully requested.

Rejoinder of claims 7-11, 13-17, 19-22, 24, 26, 28-31, 33 and 40-42 upon allowance of claim 36, from which they variously depend, is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 2-48 are earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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